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Winter 2010 Tax Tips for Small Business

New Credit Available in 2011

Hiring in 2010 could pay off

The *HIRE Act of 2010* provides incentives to employers who are contemplating adding staff to their workforce. If a business hires a qualified employee and retains that employee for 52 consecutive weeks, the business will be entitled to a general business credit of up to \$1,000 per qualified employee.

Qualified employees must meet the following requirements:

- The employee must have been hired after February 3, 2010, and before January 1, 2011.
- The employee must certify on Form W-11 that he/she has not been employed for more than 40 hours in the last 60 days.
- The employee is not a replacement for another employee unless that other employee voluntarily separated from employment or was terminated for just cause.
- The individual is not related to the employer, including family and in-laws.

To be considered "retained," the employee must be employed by the employer for 52 consecutive weeks, and wages paid to

that employee for the last 26 weeks of the period must be at least 80 percent of the wages paid during the first 26 weeks of the period. The credit is equal to 6.2 percent of the wages paid during the 52-week period, with a maximum of \$1,000.

If the employee is paid more than \$16,129.03, the employer will receive the full \$1,000 credit. The earliest the employee would meet the requirements for this credit would be February 4, 2011, so keeping good records of all wages earned and hours worked is very important.

Day Care Providers Allowed a Per Diem

New rates for 2010

Taxpayers who provide day care services in their home may find it difficult to track the meals they provide to the children. The IRS allows day care providers to deduct a standard meal allowance, per child, in lieu of actual expenses. Following are the standard rates for 2010:

Meal	Alaska	Hawaii	All Other States
Breakfast	\$1.89	\$1.38	\$1.19
Lunch/Dinner	\$3.59	\$2.59	\$2.21
Snack (limited to 2 for each child)	\$1.07	\$0.77	\$0.66

Health Care Credit Available to Small Businesses

Complex rules may provide up to a 35 percent credit for premiums paid

Currently, one of the largest costs for small businesses is health insurance. Whether the insurance is offered in full or the employee pays for a portion, the cost is continually increasing. This deters many small businesses from offering health insurance.

In an effort to assist employers with this ever increasing cost, the IRS is allowing a credit of up to 35 percent of the premiums paid by eligible small businesses (25 percent for tax-exempt employers) beginning in 2010. Several terms must be defined to determine if the credit is available for your business.

Eligible Small Employer (ESE). An eligible small employer has no more than 25 full-time equivalent employees (FTE) for the tax year. The average annual wages must be less than \$50,000. Eligible small businesses must pay at least 50 percent of the premium for those employees enrolled in the health insurance plan.

Full-time Equivalent Employees (FTE). FTEs are determined by dividing the total hours of service worked by employees by 2,080. This number is rounded down to the nearest whole number (i.e., 14.9 would be 14 FTEs).

If an individual employee works more than 2,080 hours in the year, the hours in excess are not included in the calculation. The hours worked by seasonal workers (employees who work less than 120 days

during the tax year) are not included in the calculation. Leased employee hours are included.

Certain employees are specifically excluded from the FTE definition. Sole proprietors, partners, and 2-percent shareholders in an S corporation are excluded. Employees considered 5-percent owners under the key-employee provisions for retirement plans are also excluded. Family members of the self-employed business owner are not considered FTEs, regardless of whether they have a valid employee relationship.

Average Annual Wages. Average annual wages are the total wages paid by the ESE to its FTEs for the year divided by the number of FTEs. The wages paid to individuals excluded from the definition of FTEs are not included in the wages number. For example, if a sole proprietor pays his spouse \$50,000 in total wages for the year, those wages are excluded from the total wages paid to FTEs for the year.

The average annual wages determined by the formula are rounded down to the nearest \$1,000. So, if the average annual wages are \$26,789 under the calculation, the average annual wages for purposes of the credit would equal \$26,000.

Phase-out. The credit is phased out based on both the number of FTEs and the average annual wages. If there are more than 10 but fewer than 25 FTEs, the credit is phased out. If the employer pays average annual wages in excess of \$25,000, but less than \$50,000, the credit is phased out. In other words, if the employer has fewer than 10 FTEs and

pays less than \$25,000 in average annual wages, the full credit is available. If the employer has either 25 or more FTEs or pays more than \$50,000 in average annual wages, no credit is available.

The health care credit will be part of the non-refundable general business credits. However, tax-exempt employers are allowed a refund of the credit up to the amount of payroll taxes withheld from the employees.

Tanning Excise Tax Now in Effect

Don't get burned for failing to submit Form 720

The 2010 *Health Care Act* imposes a new tax on indoor tanning services. The tax is imposed on the person receiving the service, and the service provider is required to submit the tax to the IRS.

The tax is equal to 10 percent of the amount paid for the service. The tax is submitted quarterly by the service provider using Form 720, *Quarterly Federal Excise Tax Return*.

The tax does not apply to spray-on tanning, phototherapy performed by licensed medical professionals in their offices, or to separately identifiable goods and services provided with the tanning service. Bundled services that include tanning must be split using any reasonable method to determine the amount subject to the excise tax.

Failure to submit Form 720 and pay the tax due can lead to penalties and interest. The form and tax are due on the last day of the month after the end of the calendar

quarter (April 30, July 31, October 31, and January 31).

New Rules for §179 Expensing in 2010 and 2011

Amounts, eligible property and the revocation have been extended

The *Small Business Jobs Act of 2010* included many changes to the §179 expensing rules. The new rules are effective for tax years beginning in 2010 and 2011. First, the maximum amount of §179 has been increased from \$250,000 to \$500,000. The expense amount begins to phase out when property placed into service exceeds \$2,000,000.

The new law has expanded the definition of §179 property to include qualified real property. Qualified real property is qualified leasehold improvements, qualified restaurant property and qualified retail improvement property. Businesses can take up to \$250,000 of §179 expense on these assets. The amount of §179 taken on the qualified real property reduces the \$500,000 maximum that can be used on other eligible property.

Finally, the new law has extended the time period under which a business can revoke the §179 election. Using an amended return, businesses can now revoke the §179 expense on assets placed in service before 2012.

Simple Cafeteria Plans Escape Non-discrimination

New safe harbor may make it easier to provide medical assistance to employees

Employers are allowed to offer many nontaxable benefits to their employees under a cafeteria plan. The benefits provided under the plan are not included in the employee's gross wages, and the employer is not required to pay FICA, Medicare, or unemployment tax on the benefits. However, the strict non-discrimination rules cause problems when highly compensated employees and key employees are participants.

The 2010 *Health Care Act* has provided a solution called a "simple cafeteria plan" to help employers solve the non-discrimination issues. The law provides a safe harbor under the cafeteria plan rules as well as for specified benefits provided under a cafeteria plan including group term life insurance, self-insured medical expense reimbursement plans, and dependent care assistance for tax years beginning after December 31, 2010.

Eligible employers, those with an average of fewer than 100 employees on business days during either of the two preceding years, will meet the discrimination test if they meet three requirements. These requirements are establishing the plan, making prescribed contributions, and meeting the eligibility and participation requirements of the particular plan.

The employer is required to contribute a specific amount on behalf of each qualified employee. This amount can be calculated under two methods. The first method is calculated using a uniform percentage of the employee's annual compensation (not less than 2 percent). The second method is calculated by comparing 6 percent of the employee's compensation for the year to twice the

amount of the employee's salary reduction contributions. The lesser of the two is the amount the employer is required to contribute.

Each employee who worked at least 1,000 hours is eligible to participate. The employer can exclude employees under age 21, employees with less than one year of service, those under a collective bargaining agreement, and non-resident aliens working outside the U.S.

1099 Reporting

Expanded reporting starts in 2012

Businesses that pay another non-employee taxpayer more than \$600 total in any tax year are required to furnish that taxpayer with a Form 1099. These amounts include compensation for services rendered, interest, rents, royalties, and other fixed or determinable income.

For tax years beginning in 2012, the business is going to be required to add gross proceeds and amounts in consideration for property to the list of reportable items.

For example, if the business purchased an asset from another business for more than \$600, the business would need to issue the seller a Form 1099 listing the gross amount paid for the asset.

Businesses will also be required to issue a Form 1099 to an expanded list of taxpayers. Corporations are exempt from receiving Form 1099 until 2012, but for that year and for future years, corporations are going to receive them if

they are paid more than \$600 for any of the previously mentioned items.

So, for 2010, if a business paid \$1,000 rent to a corporation, it would not be required to issue the corporation a Form 1099. However, if it pays that same rent in 2012, it will be required to provide a Form 1099 to the corporation.

Using EFTPS for Making Tax Deposits

Treasury Department to stop accepting deposit coupons

Many businesses currently use Form 8109, *Federal Tax Deposit Coupon*, to deposit their payroll tax withholdings and estimated tax payments. The IRS has proposed regulations that will require those businesses making deposits to use the Electronic Federal Tax Payment System (EFTPS) in lieu of the coupons.

After December 31, 2010, the Treasury Department will no longer accept deposit coupons. However, some small businesses may be able to simply pay the tax due with the return itself. For example, businesses with less than \$2,500 in quarterly payroll tax withholding can make their payment with Form 941, *Employer's Quarterly Federal Tax Return*. Businesses allowed to file Form 944, *Employer's Annual Federal Tax Return*, are allowed to pay the tax with the form if the liability is less than \$1,000.

Enrolling in the EFTPS program is easy, and can be more convenient. The system allows employers and other depositors to have the funds directly taken from their checking account, and payments can be set up 120 days prior to the due date.

Quik Tips

1. Beginning in 2011, employers will be required to report the cost of employer-provided health insurance coverage on the employee's W-2 as an information item.
2. For tax years beginning in 2010, the failure-to-file penalty for S corporation returns has increased to \$195 per shareholder, per month. The failure-to-file penalty for partnership returns has increased to \$195 per partner, per month.
3. The depreciation limit for an automobile used in business and placed in service in 2010 is \$3,060.
4. The 50-percent bonus depreciation has been extended to qualified assets placed in service before January 1, 2011.
5. Under the Small Business Jobs Act of 2010, businesses are allowed to deduct up to \$10,000 of start-up costs if business begins in 2010. The deduction is phased out for expenses in excess of \$60,000.
6. For 2010 only, self-employed health insurance premiums can be used to reduce net earnings from self-employment for purposes of

calculating the self-employment tax.

7. Under the Small Business Jobs Act of 2010, the 2010 depreciation limit for automobiles (\$3,060) and light trucks (\$3,160) that are “qualified property” under the bonus depreciation rules is increased by \$8,000.
8. Cellular phones have been removed from the “listed property” category of assets beginning in 2010, providing more favorable depreciation rules and reduced substantiation of the expense.